
NATURAL RESOURCES COMMISSION

**Information Bulletin #13
(Third Amendment)
February 1, 2017**

SUBJECT: Mediation in Administrative Proceedings before the Natural Resources Commission (Commission) and the Department of Natural Resources (Department)

I. Introduction to Alternative Dispute Resolution

The use of alternative dispute resolution (ADR) to resolve disputes without resort to highly adversarial proceedings enjoys general acceptance and is widely utilized by civil courts. There are several recognized methods of ADR, with the most familiar being mediation, which is also sometimes referred to as facilitation. Mediation might, in the proper case, be utilized to resolve questions of a public policy nature under the jurisdiction of the Commission or the Department and has, in limited instances, successfully resolved disputes between potential litigants before an administrative proceeding was initiated with the Commission. Most commonly, however, mediation is used by persons who are actively engaged in litigation pending before the Commission.

Through mediation, a mediator or neutral, engages the parties in an informal and non-adversarial process designed to encourage problem-solving and facilitate the cooperative development of a mutually agreeable resolution to all, or a part, of the issues in dispute. Communications between a participant and a mediator are confidential unless the participant expressly authorizes the mediator to share the content of that communication with another participant in the mediation session. Communications among the parties and the mediator are privileged. A mediator can urge a compromise; identify weaknesses in a participant's position; or point out strengths in the opposing participant's position; and can assist in bringing a sense of realism to a dispute. A mediator can also highlight the uncertainty of the potential outcome if the issues are decided by an Administrative Law Judge following litigation. However, the mediator has no authority to require the parties to enter into a negotiated settlement, to impose settlement terms upon the parties, or to order or prohibit an enforcement action. In the event a dispute is not resolved through mediation, evidence of attempts to compromise, of conduct, or of statements occurring during mediation is not admissible as evidence; however, evidence discoverable through other means shall not be excluded merely because it is discussed during mediation. Participants in mediation retain all of their legal rights and privileges under [IC 4-21.5-3](#), commonly referred to as the Administrative Orders and Procedures Act (AOPA).

II. Administrative Mediation and the Indiana Shared Neutrals Program

1. Application: In accordance with [IC 4-21.5-3.5-2\(a\)](#), the Commission has determined that mediation, as authorized by [IC 4-21.5-3.5](#), is appropriate for addressing matters before the Commission and the Department. This document should be construed liberally to accomplish the implementation of mediation services as appropriate to the efficient operation of these agencies.

The Commission's Division of Hearings (Division) shall continue participation in the Indiana Shared Neutrals Program by providing and receiving mediation services on a reciprocal basis under a Memorandum of Understanding with other governmental agencies. Efforts by the Division to identify and maintain a voluntary pool of mediators from within other governmental agencies as well as from sources outside state government shall be continued and expanded. In these efforts, open communications should be maintained or developed with state, local, or regional government, the Indiana state judiciary, and the Indiana State Bar Association.

2. Application of Mediation to Proceedings of the Commission: Mediation may be used in additional situations, but is expressly made available for the following matters under the jurisdiction of the Commission:

- (1) Proceedings in which the Commission, or an Administrative Law Judge for the Commission, is the "ultimate authority" pursuant to AOPA;
- (2) After the appointment of a hearing officer for the Commission regarding the creation, management, or dissolution of a conservancy district pursuant to [IC 14-33](#);
- (3) Disputes arising between the users of surface water pursuant to [IC 14-25-1-8](#); and
- (4) Any other matter in which mediation is determined appropriate by the Commission, a Division Administrative Law Judge, or hearing officer to assist in achieving settlement or developing consensus in a disputed matter or issue.

3. Application of Mediation and Facilitation to Proceedings of the Department: Mediation is made available for the following matters under the jurisdiction of the Department:

- (1) A public hearing prior to a licensing action pursuant to [IC 14-11-4-8](#);
- (2) A conservancy district matter pending before the Department;

- (3) Before a decision by the Historic Preservation Review Board on the addition or removal of a site from the Register of Indiana Historic Sites and Structures pursuant to [IC 14-21-1-17](#); and
- (4) Hearings held on petitions for rule change.

4. Selection of a mediator: The participants may agree upon a mediator. Unless the participants otherwise agree, a mediator will serve at no cost to them. If the participants do not agree upon a mediator, the Administrative Law Judge or hearing officer may seek the appointment of a mediator from the Indiana Shared Neutrals Program. A mediator selected under this paragraph shall be qualified under [IC 4-21.5-3.5-8](#).

5. Historical Development and Approval by the Commission and Publication: The initial information bulletin detailing appropriate mediation applications was approved by the Commission at its June 1996 meeting as a "pilot project" and published in the Indiana Register at 19 IR 3237. The first amended information bulletin was approved by the Commission as a nonrule policy document during its April 1999 meeting and published in the Indiana Register at 22 IR 2949 (June 1, 1999). The second amendment to this information bulletin was approved by the commission during its November 2005 meeting and published in the Indiana Register at 29 IR 1407 (January 1, 2006). This third amendment was approved by the Commission at its January 2017 meeting. The discussion of the history of mediation before the Commission is substantially removed and provides a more focused discussion regarding the suitability of mediation and the means by which mediation services may be accessed.

Posted: 01/25/2017 by Legislative Services Agency
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